

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012101067

ORDER GRANTING MOTION TO  
AMEND COMPLAINT

On October 26, 2012, Student filed a Due Process Hearing Request (complaint), naming Alhambra Unified School District (District). On November 29, 2012, the Office of Administrative Hearing (OAH) granted the parties' stipulated joint request for a continuance, setting the matter for a prehearing conference (PHC) of January 4, 2013, and a due process hearing for January 22-24, 28-29, 2013.

On December 12, 2012, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint). District filed a response on December 13, 2012, indicating that it does not oppose the amendment, as long as the present PHC and hearing dates are retained.

An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).)<sup>1</sup> The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Here, Student seeks to amend his complaint to add allegations relevant to the continued denial of a FAPE, which has caused his Parent to notify the District that Student is being unilaterally placed in nonpublic school (NPS), following notice of December 12, 2012. Student seeks a determination that the unilateral placement by Parent was appropriate, that District is required to reimburse Parent for the NPS and, further, that OAH order that Student be placed in an NPS, with appropriate related services.

In responding to Student's motion, District seeks to characterize Student's amendment as a mere addition of a remedy. However, Student has alleged additional facts

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<sup>1</sup> All statutory citations are to Title 20 United States Code unless otherwise indicated.

that occurred after the filing of the original complaint, such as parent's enrollment of Student in a non-public school and the requisite 10 day notice to District of unilateral enrollment. In addition, the new remedy allegations are related to the new allegation that District continued to deny Student a FAPE after the filing of the original complaint, such that it was reasonable for parents to unilaterally enroll Student. Thus, although in most circumstances a change of requested remedy would not necessitate amendment, the instant proposed amendment would. Further, to the extent District's non-opposition is premised on retention of the existing hearing dates, the statute unambiguously requires that the filing of an amended complaint restarts the applicable timelines. (20 U.S.C. §1415(c)(2)(E)(ii).)

The motion to amend is timely and is granted. The amended complaint shall be deemed filed on the date of this order. All applicable timelines shall be reset as of the date of this order. OAH will issue a scheduling order with the new dates.

IT IS SO ORDERED.

Dated: December 17, 2012

/s/

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CLIFFORD H. WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings